IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1078 of 1998

For Approval and Signature:
***HONOURABLE* MS. JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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MOHANLAL KALIDAS MODI & 4 - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR BM MANGUKIYA for Petitioners
MS MINI NAIR AGP for Respondent(s) : 1,
MR MD PANDYA for Respondent(s) : 2,
M/S TRIVEDI & GUPTA for Respondent(s) : 3,
None for Respondent(s) : 4,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT
19th October, 2007

ORAL JUDGMENT

This petition under *Article* 226 of the Constitution of India is preferred by the owners of the land bearing Survey No. 128/2 admeasuring 7082 sq.m situated at village-Katargam, Surat. The

petitioners claim that the disputed land is their ancestral property. The petitioners had submitted a development plan for construction residential houses in respect of the disputed land to the respondent-Surat Municipal Corporation [hereinafter referred to as, "***the Corporation***"] as far back as in the year 1992. The said plan was not sanctioned by the Corporation for one or the other reason, though the petitioners had complied with all the formalities and had submitted required materials. It is the inaction on the part of the Corporation by which the petitioners are aggrieved. The petitioners have prayed that the plan submitted by the petitioners may be deemed to have been sanctioned. Reliance is placed on sub-section (4) of Section 29 of the Gujarat Town Planning & Urban Development Act, 1976 [hereinafter referred to as, "***the Act of 1976***"].

The petition is contested by the Corporation. One Mr. N.S Oza, Junior Engineer in the Corporation has made the counter affidavit. It is stated that the plan submitted by the petitioners was rejected on 28th June, 1993. Once the plan was rejected, the matter can be reopened on payment of scrutiny fees alone.

The petitioners have not paid the scrutiny fees. It is also stated that under the relevant development plan made by the Surat Urban Development Authority, the disputed land is reserved for Gujarat Slums Clearance Board. In any view of the matter, if the plan submitted by the petitioners were deemed to have been sanctioned, the petitioners ought to have proceeded with and completed the construction within one year from the date of such deemed approval.

Upon perusal of the record, it appears that the petitioners had submitted development plans for the disputed land alongwith the requisite fees as far back as in the month of July, 1992. The said plans were not sanctioned. However, time and again queries were raised in respect of various matters like proof of ownership, available FSI, details/particulars of built-up area, margin land referred to in the order made under the Urban Land [*Ceiling & Regulation*] Act, 1976, etc. It also appears that the said queries were answered by the petitioners time and again. It should, however, be noted that in none of the communications, the Corporation raised objection as to the reservation of the disputed land under the

development plan for Gujarat Slums Clearance Board. The said objection has been raised for the first time before this Court in the counter affidavit. The defense that the petitioners have not paid the scrutiny fees is also unsustainable. Chapter-IV of the Act of 1976 provides for control of development and use of land included in the development plans. Section 26 of the Act of 1976 provides for permission in writing of the appropriate authority. Section 27 thereof provides for application of permission for development. Section 29 provides for grant or refusal of permission. Sub-section [1] thereof refers to payment of development charges and scrutiny fees; if any. The words, "*scrutiny fees*" have been inserted in the said sub-section by amendment made on 3rd August, 1995. Thus, it is clear that in the year 1993, the petitioners were not required to pay scrutiny fees. The defense taken in the counter affidavit is a lame excuse which cannot be sustained. Sub-section [4] thereof provides that, "***..If the appropriate authority fails to communicate its order to the applicant within three months from the date of receipt of the application, such permission shall be***

deemed to have been granted to the applicant on the expiry of the said period of three months."

As recorded hereinabove, the defense raised by the Corporation is not worth the name. It is apparent that the petitioners' application for development of the disputed land made under Section 27 of the Act of 1976 has been kept on hold on one pretext or the other. The rejection of the said application communicated on 28th June,1993 is also not justified. The none consideration of the representation made by the petitioners under the pretext that the petitioners had not paid the scrutiny fees is a mere ruse. The approach of the Corporation is highly deplorable and certainly not in the interest of the public at large or the planned development. Besides, in view of passage of time and further developments also, some of the objections raised by the Corporation would require reconsideration i.e, the Gujarat Slums Clearance Board has since been wound up and the Urban Land [*Ceiling & Regulation*] Act, 1976 has been repealed.

In above view of the matter, the petition deserves to be allowed. The petitioners will submit

the development plan for the disputed land afresh alongwith the required materials. The said development plan shall be considered by the Corporation within two months from the date of its submission. The petitioners will not be required to pay either the development charges afresh or the scrutiny fees. In the event, the Corporation fails to communicate its decision *within* two months from the date of the submission of the development plan, the development plan submitted by the petitioners will be deemed to have been sanctioned. In that case, the petitioners will be at liberty to proceed with the construction activities on the disputed land.

Rule is made absolute in the above terms with cost to the petitioners. The respondent no.3-Surat Municipal Corporation will pay cost of Rs. 3,000/= to the petitioners. The respondents nos. 1, 2 & 4 will bear their own cost.

Registry will send the *writ* forthwith.

{Ms. R.M Doshit, J.}

*Prakash**